

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA

v.

MARCUS ANTHONY RODRIGUEZ,
Defendant.

UNDER SEAL

Case No. 1:22-MJ- 15

**AFFIDAVIT IN SUPPORT OF
A CRIMINAL COMPLAINT AND ARREST WARRANT**

I, Jose J. Oquendo, a Special Agent with the Bureau of Alcohol, Tobacco, Firearms & Explosives (“ATF”), being first duly sworn, hereby depose and state as follows:

INTRODUCTION AND AGENT BACKGROUND

1. I make this affidavit in support of a criminal complaint and arrest warrant charging Marcus Anthony Rodriguez (hereafter “RODRIGUEZ”) with possession of unregistered machineguns in violation of Title 18, United States Code, Section 922(o), within the Eastern District of Virginia and elsewhere.

2. I am a Special Agent with the ATF and have been so employed since 2014. I am currently assigned to the ATF Falls Church II Field Office, an enforcement group responsible for investigating violent crime, gangs, armed drug trafficking, and other firearm related violations.

In my capacity as a law enforcement officer, I have investigated individuals for the illegal possession and use of firearms.

3. This affidavit does not contain every fact known to me regarding this investigation, but rather contains information necessary to demonstrate probable cause in support of the above-referenced criminal complaint and arrest warrant. I have participated in the investigation of the offenses set forth below. The facts and information contained in this affidavit are based on my personal knowledge and information obtained from other law enforcement officers. All observations referenced in this affidavit that were not personally made by me were relayed to me by the person(s) who made such observations or in reports that detailed the events described by that person(s).

PROBABLE CAUSE

4. On May 14, 2021, ATF received an anonymous tip through ATF's mobile app tip line, which allows users to anonymously and confidentially submit tips about crimes, regarding the sale of an AR-9 automatic rifle through Facebook. The tip named the seller of the AR-9 and showed a screenshot of a Facebook Messenger conversation between the seller who was attempting to sell the AR-9 machinegun and another individual.

5. On June 22, 2021, ATF special agents interviewed the Seller (hereafter referred to as "the Cooperating Source") in an ATF vehicle at a Target store parking lot in Fredericksburg, VA regarding the machinegun transfer. Before the interview, the Cooperating Source was advised of the Cooperating Source's *Miranda* rights. The Cooperating Source stated that the Cooperating Source understood these rights. The interview was video recorded. ATF special agents advised that the Cooperating Source was not under arrest and could leave the interview anytime. The ATF special agents asked the Cooperating Source about the Facebook Messenger

chat described above, regarding the sale of an AR style machinegun. After initially denying involvement, the Cooperating Source acknowledged participating in the Facebook Messenger conversation and stated that the firearm was a machinegun. The Cooperating Source described selling the machinegun to K.A. who lives in Brandywine, Maryland for one thousand dollars. The Cooperating Source stated that K.A. came to Fredericksburg, VA, which is in the Eastern District of Virginia, to pick up the machinegun from the Cooperating Source. The Cooperating Source described purchasing the lower receiver of the AR-9 rifle from GFR, LLC, a firearms store located in Fredericksburg, VA.

6. The Cooperating Source stated that an active-duty member of the U.S. Marine Corps named Marcus RODRIGUEZ modified the AR-9 rifle into a machinegun that was sold to K.A. The Cooperating Source stated that RODRIGUEZ has been modifying AR-style rifles into machineguns for approximately a year and a half. The Cooperating Source stated that RODRIGUEZ has a mill and a press to convert the rifles into machineguns. The Cooperating Source stated that RODRIGUEZ lives in Fredericksburg, VA. The Cooperating Source described originally meeting RODRIGUEZ through Armslist.com, a website where individuals can buy, sell, and trade firearms through private sales. The Cooperating Source stated that RODRIGUEZ charged three hundred dollars to convert the lower receiver to a fully automatic rifle. The Cooperating Source stated that RODRIGUEZ converted lower receivers without serial numbers, or “ghost lowers,” which RODRIGUEZ bought online, into machineguns. RODRIGUEZ had sent the Cooperating Source videos of RODRIGUEZ shooting the converted rifles and that the firearms function as machineguns. The Cooperating Source stated that RODRIGUEZ transported the fully automatic machineguns to Texas and sold them there. K.A. contacted the Cooperating Source through Facebook Messenger and told the Cooperating Source

that the machinegun worked and that he wanted to purchase another one. The Cooperating Source contacted RODRIGUEZ and obtained an AR-15 machinegun from him which the Cooperating Source then sold to K.A.

7. On June 24, 2021, ATF conducted a search of the National Firearms Registration and Transfer Record (“NFRTR”), the central registry for all items regulated under the National Firearms Act (“NFA”), which includes machineguns, to verify if the Cooperating Source, K.A., or RODRIGUEZ had any tax stamps certifying any machinegun ownership or licenses. The search of the registry came back negative for all three and no machineguns were registered to them.

8. On July 8, 2021, ATF special agents conducted surveillance on the RODRIGUEZ residence, 2504 Manor Drive, Apt 1D, Fredericksburg, VA 22401. The ATF special agents observed, a blue Jeep Wrangler bearing Virginia license plate ULD9457, parked in the apartment complex parking lot in front of the apartment building labeled 2504. A search of the National Crime Information Center (“NCIC”) revealed the blue Jeep Wrangler bearing Virginia license plate ULD9457 is registered to RODRIGUEZ. ATF special agents observed RODRIGUEZ leave his apartment, enter the Jeep Wrangler bearing Virginia license plate ULD9457 and depart the area. Approximately 70 minutes later, ATF special agents observed RODRIGUEZ return to the area in the Jeep Wrangler bearing Virginia license plate ULD9457 and return to his apartment.

9. On September 23, 2021, ATF special agents again met with the Cooperating Source. During the meeting, the Cooperating Source agreed to facilitate the purchase of a machinegun from RODRIGUEZ in furtherance of the investigation. The Cooperating Source contacted RODRIGUEZ via cell phone.

10. On September 28, 2021, an ATF special agent acting in an undercover capacity, contacted RODRIGUEZ via cell phone. Through a recorded telephone conversation and preserved SMS/MMS messages, RODRIGUEZ agreed to sell the ATF special agent a firearm on October 1, 2021.

11. On October 1, 2021, ATF special agents conducted a controlled purchase of a firearm from RODRIGUEZ. The operation was audio and video recorded. During the operation, an ATF special agent acting in an undercover capacity purchased a custom-made Aero Precision model X15 semi-automatic rifle bearing serial number X249327 from RODRIGUEZ for \$1,900.00. RODRIGUEZ arrived at the controlled purchase location in the Jeep Wrangler bearing Virginia license plate ULD9457. During the transaction, RODRIGUEZ told the agent that he has manufactured machineguns in the past and has “no problem doing them.” RODRIGUEZ stated that it would take seven to ten days to receive the parts and build a machinegun. RODRIGUEZ stated that he has built firearms for other people, including firearms that he delivered to Pennsylvania and Texas. RODRIGUEZ stated that he builds the firearms in a storage unit located somewhere near his residence. RODRIGUEZ departed the purchase location in the Jeep Wrangler.

12. Through the recorded in-person conversation at the controlled purchase and preserved SMS/MMS messages conducted via cell phone that continued from October 1, 2021, through October 13, 2021, RODRIGUEZ agreed to manufacture an un-serialized machinegun and sell the un-serialized machinegun to the undercover agent.

13. On October 13, 2021, ATF special agents conducted a controlled purchase of an M16-type, 5.56mm NATO caliber, machinegun bearing no manufacturer’s marks or serial number from RODRIGUEZ for \$1,600.00. The transaction was audio and video recorded.

RODRIGUEZ arrived at the controlled purchase location in Stafford, Virginia, in the Eastern District of Virginia, in the blue Jeep Wrangler bearing Virginia license plate ULD9457. During the transaction, RODRIGUEZ provided the undercover agent with an M16-type, 5.56mm NATO caliber, machinegun, bearing no manufacturer's marks and no serial number. RODRIGUEZ explained the operation of the firearm and stated that, "It's full auto." RODRIGUEZ stated that he had built "a few" machineguns for others. RODRIGUEZ stated that he had built two others at the same time that he built the machinegun for the undercover agent and that he had two other "builds" to complete for other people. ATF special agents followed RODRIGUEZ away from the controlled purchase location, but discontinued surveillance when RODRIGUEZ entered Marine Corps Base Quantico.

14. Following the undercover controlled purchase, the firearm was function checked by ATF special agents. The firearm function checked as a machinegun.

15. On October 22, 2021, ATF agents submitted the suspected machinegun to the ATF Firearms Technology Criminal Branch for examination. On October 27, 2021, the ATF Firearms Technology Criminal Branch issued a Report of Examination regarding the firearm purchased from RODRIGUEZ on October 13, 2021 concluding that the M16-type, 5.56mm NATO caliber, firearm bearing no manufacturer's marks or serial number is a machinegun as defined by Title 18 United States Code, Section 921(a)(23) and Title 26 United States Code, Section 5845(b).

16. On November 5, 2021, U.S. Magistrate Judge Theresa C. Buchanan of the Eastern District of Virginia issued a tracking warrant under Case No. 12-SW-759 authorizing the installation and monitoring of a GPS tracking device on the blue Jeep Wrangler bearing Virginia

license plate ULD9457. On November 9, 2021, ATF agents placed a vehicle tracker on the blue Jeep Wrangler bearing Virginia license plate ULD9457.

17. On November 11, 2021, the vehicle tracker showed that the blue Jeep Wrangler bearing Virginia license plate ULD9457 traveled from RODRIGUEZ's residence to a storage unit facility called U-Stor-It Mini Storage located at 3662 Jefferson Davis Highway, Fredericksburg, VA 22408. RODRIGUEZ had earlier stated to the ATF undercover special agent that he manufactures the machineguns at a storage unit.

18. On November 28, 2021, the vehicle tracker again showed that the Jeep Wrangler bearing Virginia license plate ULD9457 traveled to the U-Stor-It Mini Storage located at 3662 Jefferson Davis Highway. Law enforcement surveillance visually confirmed RODRIGUEZ was driving the Jeep Wrangler bearing Virginia license plate ULD9457 when it left the storage unit.

19. On November 29, 2021, the ATF undercover contacted RODRIGUEZ regarding his place on the wait list for the two machineguns he had ordered from RODRIGUEZ. RODRIGUEZ text messaged a picture to the ATF undercover. The picture showed a list of individuals who were on the wait list for firearms. The list was labeled "Builds" and showed that there were two individuals listed in front of the ATF undercover order and two individuals listed after.

20. On December 11, 2021, the ATF undercover contacted RODRIGUEZ regarding whether RODRIGUEZ had made progress on building the machineguns. RODRIGUEZ responded, "Nope....I'm chillin on building right now." RODRIGUEZ further stated, "ATF paid a visit to my place." The ATF undercover responded, "What happened" and RODRIGUEZ asked "Can you talk real quick". The ATF undercover contacted RODRIGUEZ through a voice call. The voice call was recorded and preserved as evidence. RODRIGUEZ stated that the last

gun he had built, he had built for his “buddy” and that the “buddy” had requested to send RODRIGUEZ the payment through a money app. RODRIGUEZ told his friend not to say in the app that the money was for a gun. RODRIGUEZ stated that he had received a deposit to his account for \$1,800 with a message stating “for rifle” from his friend.

21. RODRIGUEZ stated that sometime later personnel from the ATF came to his residence and requested to talk to him. RODRIGUEZ stated that the ATF agents asked him what the \$1,800 transaction for a rifle was about and RODRIGUEZ stated that he had done a custom work for his friend’s rifle. RODRIGUEZ stated that the custom work for his friend’s rifle was a paint job and installation of a drop in trigger. RODRIGUEZ stated that the ATF agents then asked about the fully automatic kits that were purchased on-line and RODRIGUEZ stated that he responded to them that he did not know that they were fully automatic kits and that he was just looking for lower parts kits for rifles. RODRIGUEZ stated that the ATF agents asked if he still had the fully automatic kits and RODRIGUEZ responded yes that he still had the fully automatic kits. RODRIGUEZ stated that he asked the ATF agents if there was any way to get rid of the parts kits and the ATF agents stated that he could turn the kits over to a Federal Firearms Licensee (“FFL”).

22. After describing these events to the ATF undercover during the voice call, RODRIGUEZ then told the ATF undercover that he was going to wait a month before he started building another rifle. RODRIGUEZ stated that he had to be careful purchasing items and that he would now only purchase items using cash and only at the gun shows. RODRIGUEZ stated that he still had the four fully automatic kits at his residence and that he had enough kits to build both of the machineguns that were ordered by the ATF undercover. RODRIGUEZ further stated that he could possibly build the rifles and make them fully automatic later. The ATF undercover

stated that he thought the fully automatic parts kits were legal to purchase. RODRIGUEZ responded that yes they were legal to purchase but that the website has a warning disclaimer stating that one needs a Class 3 license from ATF to manufacture machineguns.

23. RODRIGUEZ stated that the Cooperating Source has a friend that has fully automatic kits and that he could possibly get the kits from that individual. RODRIGUEZ suggested to the ATF undercover that he could build the two rifles to sell to the ATF undercover and later convert them into machineguns. The ATF undercover stated to RODRIGUEZ that he could wait until the machineguns were ready and RODRIGUEZ stated that he would let him know.

24. On December 16, 2021, U.S. Magistrate Judge Theresa C. Buchanan of the Eastern District of Virginia issued an order extending by forty-five (45) days, from December 20, 2021, up to and including February 3, 2022, the duration of the tracking warrant under Case No. 12-SW-759.

25. On Wednesday, January 5, 2022, RODRIGUEZ contacted the ATF undercover, via SMS/MMS message, and stated, "I'm gonna get started on the builds tomorrow.....thats if yall still want them". On Friday, January 7, 2022, the ATF undercover responded in the affirmative, and RODRIGUEZ stated that he would have the machineguns done by Friday. These messages have been preserved.

26. On Friday, January 14, 2022, ATF, Naval Criminal Investigative Service, and United States Postal Inspection Service special agents and inspectors conducted a controlled purchase of two M16-type machineguns bearing no manufacturer's marks or serial numbers from RODRIGUEZ for \$2,700.00. One of the M16-type machineguns was a 5.56 caliber and the other M16-type machinegun was a .300 Blackout caliber. The transaction was audio and video

recorded. RODRIGUEZ arrived at the controlled purchase location in Stafford, Virginia, in the Eastern District of Virginia, in a blue Hyundai Elantra bearing Virginia license plate WYL8162. The Hyundai Elantra is registered to RODRIGUEZ's wife. During the transaction, RODRIGUEZ provided the undercover agent with two firearms bearing no manufacturer's marks and no serial number. RODRIGUEZ stated, "they're all full autos, they've got the sears in them." I know from my training and experience that "sears" refers to auto sears that are used to convert a semi-automatic rifle into a fully automatic machinegun. RODRIGUEZ stated that he had built a 9mm AR-type rifle for his son but added a "full auto kit" for himself. RODRIGUEZ stated that he had made his wife purchase a full auto lower parts kit. Law enforcement followed RODRIGUEZ away from the controlled purchase location and observed RODRIGUEZ arrive at his residence located at 2504 Manor Dr, Apt 1D, Fredericksburg, VA 22193.

27. Following the undercover controlled purchase, ATF special agents function checked the firearms in the field. Both firearms function checked as machineguns. The firearms were then transported to the ATF Firearms Technology Criminal Branch for further examination and a certified report, which is still pending.

CONCLUSION

28. Based on the foregoing, I submit there is probable cause to conclude that on or around October 13, 2021, and on or around January 14, 2022, within Stafford County, Virginia, within the Eastern District of Virginia, MARCUS ANTHONY RODRIGUEZ did unlawfully, knowingly possess machineguns, that is, an M16-type, 5.56mm NATO caliber machinegun, an M16-type, 5.56mm caliber machinegun, and an M16-type, .300 Blackout caliber machinegun, none of these firearms bearing manufacturer's marks or serial numbers, in violation of Title 18, United States Code, Section 922(o).

Respectfully submitted,



Jose J. Oquendo
Special Agent
Bureau of Alcohol, Tobacco, Firearms &
Explosives

Subscribed and sworn to before me on January 26, 2022

THERESA C. BUCHANAN
UNITED STATES MAGISTRATE JUDGE